IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 02 OF 2005
IN
CIVIL MISC. APPLICATION NO. 102 OF 2005

Vinayak Baburao Rago. ... Applicant.
Versus.
Lata Vinayak Rago. ... Respondent.

Shri U.G.Kerkar with Shri Vilas A.Jadhav for the Applicant.

Shri S.V.Warad for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 16th Sept., 2005.

P.C.:

1. Heard the learned Advocates appearing for the parties. The prayer in this Application is for review of the Judgment and order dated 19th August 2004 passed by this Court in Misc.Civil Application No.102 of 2002. The said Misc.Civil Application was made by the Respondent-wife praying for transfer of Matrimonial Petition filed by the Applicant herein which was pending in the Court of the learned 5th Family Court, Pune, to the Court of the learned District Judge at Latur. By Judgment and order dated 19th August 2004, this Court accepted the contention of the Respondent-wife in paragraph 13 of the Transfer Application that the Respondent-wife was the resident of Latur and she did not have any relative or family friend in Pune and she is required to stay in lodge whenever she attends the

proceedings in the Family Court at Pune.

2. By this Review Petition it is brought to my notice by the Applicant-husband that in Regular Criminal Case No.275 of 2002 the father of the Respondent deposed before the learned Judicial Magistrate First Class, Court No.5, Pune, saying that his son who is a medical practitioner and his son's wife who is also a medical practitioner are practicing at Pune. The said deposition was recorded on 29th September 2004. It is also brought to my notice the order dated 5th November 2004 passed by this Court in Criminal Application No.3152 of 2004. By the said order passed in Criminal Application No.3152 of 2004 this Court rejected the prayer made by the Respondent for transfer of the Criminal Case. From the said order it appears that the transfer was sought by the Respondent-wife on the ground that she has no relations in Pune and therefore, it was not possible for her to pursue the criminal action against the Applicant at Pune. This Court observed that this stand of the Respondent-wife is belied by the evidence of her father in which the father has conceded that the brother of the Respondent-wife is practicing at Pune.

3. The learned Advocate for the Applicant submitted that when Misc.Civil Application No.102 of 2002 came up before this Court on 19th August 2004, the fact that the

Respondent's brother was residing at Pune was suppressed from this Court by the Respondent-wife and that is the reason why this Court recorded a finding that the Respondent-wife has no relations or friends at Pune. He, therefore, submitted that the order dated 19th August 2004 needs to be reviewed and/or recalled.

4. The learned Counsel appearing for the Respondent-wife submitted that the Misc.Civil Application was filed in the year 2002 and the brother of the Respondent started practicing at Dhankawadi, Pune on 11th May 2003. He pointed out that the Respondent's brother and his wife were staying in a single room. He submitted that on 19th August 2004, this subsequent event could not be brought to the notice of this Court as the Respondent had not communicated with her Advocate. He submitted that there was no intention on the part of the Respondent of suppressing any fact. He submitted that the later on the Applicant has applied for withdrawal of the Matrimonial Petition of which order or transfer was sought by filing Misc.Civil Application No.102 of 2002 and therefore, this Review Petition need not be entertained.

5. I have considered the submissions. On a plain reading of the averments made in paragraph 13 of the Misc. Civil Application No.102 of 2002, it is apparent that the Respondent-wife came before this Court by

contending that she does not have any relative or family friend staying in Pune and therefore, for the sake of attending the proceedings in Family Court at Pune, the Respondent is required to reside in a lodge. This was pleaded as one of the grounds for transfer. A perusal of the order dated 19th August 2004 passed by this Court shows that only in view of the aforesaid averments made in paragraph 13 of the Application by the Respondent-wife, this court passed the order of transfer. It is obvious that the ground as pleaded by the Respondent-wife was not in existence on 19th August 2004 as by that day the Respondent's brother and her brother's wife were staying at Dhankawadi, Pune and were in fact practicing medicine at Pune from May 2003. It is obvious that if this fact was brought to the notice of this Court the order dated 19th August 2004 would not have been passed on the basis of the averments made in paragraph 13 of the Application filed by the Respondent-wife. As a matter of fact the aforesaid fact ought to have been brought to the notice of this Court on 19th August 2004 by the Respondent. In view of this position, the order dated 19th August 2004 needs to be recalled as the ground pleaded in paragraph 13 of the said application made by the Respondent was no longer surviving on that day. Misc. Civil Application No.102 of 2002 will have to be dismissed. However, if any other ground of transfer is available as of today, the Respondent will be free to avail of that ground.

6. As regards the submission made by the learned Counsel for the Respondent on the basis of the Application for withdrawal of the Matrimonial Petition made by the Applicant is concerned, it is obvious that the said application is not for unconditionally withdrawing the petition, but it is an application for seeking permission to withdraw with liberty to file a fresh petition. In any case when a clear ground to review and/or recall of the earlier order passed is made out, the said application for withdrawal made is not relevant.

7. Accordingly the following order is passed:

(i) The Application is allowed. The order dated 19th August 2004 passed by this Court in Misc.Civil Application No.102 of 2002 is recalled and Misc.Civil Application No.102 of 2002 stands dismissed.

(ii) It is made clear that if any other ground is available as of today in favour of the Respondent to seek transfer, the Respondent will be free to make application for transfer.

(iii) The Respondent is directed to pay costs of Rs.1500/- of this Application to the Applicant.

(iv) The parties to act on an authenticated copy of this order.

Judge.